

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

77-2087

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-2087

NORMAN WILCOX,

Appellant,

—v.—

UNITED STATES OF AMERICA,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

APPENDIX FOR THE APPELLEE

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District of Connecticut*

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Appellant's Motion to Vacate

Pursuant to 28 U.S.C. § 2255

On March 10, 1973, your petitioner was transferred on a Writ of Habeas Corpus Ad Prosequendum to New Haven, Connecticut for the expressed purpose of having a hearing on his motion to suppress.

On March 12, 1973, the trial judge held a hearing in absence of your petitioner on the motion to suppress; although your petitioner was in the courthouse, he never left the cell room of the U. S. Marshal for a courtroom appearance in the matter.

On March 13, 1973, your petitioner again wasn't taken to court so he requested by letter for a court appearance and appeared on 16 March 1973.

On March 26, 30, and April 10, 1973, hearings were held again in the absence of your petitioner, on his motion to suppress identification testimony.

ARGUMENT

It is the contention of your petitioner that he was denied his right to be confronted with witnesses against him when the trial judge held pre-trial hearings on various motions to suppress, (Sixth Amendment, U.S. Constitution F.P.C. P. 43 U.S.C.A.) the sixth amendment guarantees that in all criminal prosecutions the accused shall enjoy the right to be confronted with the witnesses against him, this rule extends and is applicable to hearings on Pre-Trial Motions to Suppress (*United States v. Clark*, 475 F.2d 240 (2d Cir.)). In this instant matter, your petitioner was transferred to Connecticut on a Writ of Habeas Corpus Ad Prosequendum for the expressed purpose of having a hearing on a Pre-Trial Motion to Suppress evidence and identification testimony, however,

Appellant's Motion to Vacate

your petitioner never left the confines of the U.S. Marshal's Office for a courtroom appearance in the matter. After your petitioner was advised by counsel that the hearings of March 12, and 13th, 1973 were held in petitioner's absence, he immediately requested that he be present for the remainder of the proceeding, but at this stage, there was very little your petitioner could do to effectively assist counsel in the presentation of his motion. At no time did your petitioner relinquish or abandon a known right, and his silence in absentia should not be construed as a waiver. Two points that were very prejudicial to your petitioner, inter-alia, because of his absence from the hearing was Trooper Fedorko's testimony as to his time of arrest of your petitioner, and the sequence of events leading to the seizure of a weapon from the Motorcycle's saddlebag.

1) Trooper Fedorko placed the time of arrest at 1:30 PM which was a time of very good daylight on that day for observation. The true time of arrest was 9:00 PM, a very poor time for observation as it was dark. Had your petitioner been present, he could have brought this discrepancy to the attention of counsel. It may well be that Trooper Federko found it necessary to lie about the time he observed the cardboard license plate to better persuade the court of his reason for stopping petitioner, otherwise, his ability to see in the dark may have become questionable. It was also possible that your petitioner could have explored with counsel the possibility of "Harassment of a Biker" (Motorcyclist) as a defense against Trooper Fedorko's reason for stopping him. If note will be taken of the trial transcript, Trooper Fedorko's reason for the stop has been broadened to include speeding.

Appellant's Motion to Vacate

2) Although your petitioner testified to the sequence of events that occurred during the search of his Motorcycle, he failed to cover one point properly that was very vital to his motion; had he been present for the cross-examination of Trooper Fedorko by Mr. Rosen, his recollection would have been refreshed by the reference to Trooper Fedorko's report that was made at the time of arrest. Your petitioner in fact gave the bill of sale to the trooper for the motorcycle before the search along with the valid driver's license. There was no reason a search of the saddlebags be properly based on, in the trooper's hand was the bill of sale, the necessary document to apply for registration; hence, no registration could possibly exist. The only document in the saddlebags was a certificate of warranty for the motorcycle that was brand new.

Because your petitioner was denied his right to confront the witnesses against him, he asks that this Honorable Court will grant the relief he seeks.

Memorandum of Decision

Ruling on § 2255 Motion

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil No. N-75-112

NORMAN WILCOX

—v.—

UNITED STATES OF AMERICA

Civil No. B-75-160

RICHARD JENKINS

—v.—

UNITED STATES OF AMERICA

Civil No. B-75-161

DONALD HALL

—v.—

UNITED STATES OF AMERICA

Civil No. B-75-190

LYNN ELLEN MORROW

—v.—

UNITED STATES OF AMERICA

Memorandum of Decision

Petitioners' motions, all brought pursuant to 28 U.S.C. § 2255, present the single question whether they were deprived of any rights when they were absent from the courtroom during several days of hearings on pre-trial motions prior to their joint trial on federal bank robbery charges.¹ Petitioners claim, in letters submitted to this Court without the assistance of counsel, that the conduct of the hearings in their absence was in violation of the Sixth Amendment to the United States Constitution and Fed. R. Crim. P. 43, and that they are therefore entitled to new trials.² In response to this Court's order, the Government has responded to each of the petitions by submitting a memorandum of law and affidavits from a number of the persons who were involved in the proceedings now in dispute. The Government has also served interrogatories on three of the petitioners,³ and because it considers the original response in some respects unsatisfactory, has supplemented those interrogatories with a motion to compel responses to certain of the questions. Although the record varies in some minor respects from petitioner to petitioner, the material facts sufficient for a decision are not in dispute, and no hearing is required.

¹ A fifth defendant was also convicted at trial, but the Court granted his motion for a directed judgment of acquittal.

² This issue is now raised for the first time in the course of this long proceeding. No objection was made at or before trial, although the Court issued a written memorandum of decision with respect to the pre-trial motions, and the issue was also not raised on direct appeal. See *United States v. Jenkins*, 496 F.2d 57 (2d Cir. 1974). Even if petitioners' claim had merit, new trials would not be warranted. If the right to be present was not effectively waived, new suppression hearings could be held on any issues requiring the presence of a defendant.

³ The Government did not serve interrogatories on Wilcox.

Memorandum of Decision

All petitioners were tried and convicted of the September 25, 1972, robbery of a branch of the Union Trust Company in Danbury, Connecticut. On March 12, 1973, this Court heard argument on petitioners' motions to dismiss the indictment, and began to take evidence on suppression motions also filed on behalf of petitioners. The suppression hearings were continued on March 13, 16, 26, and 30, and April 10. Each petitioner was at all times represented by separate, court-appointed counsel.

At the conclusion of the argument on the motion to dismiss, the Court asked counsel whether they wanted their clients present in Court for the suppression hearings that were about to begin; all petitioners were then in the Marshal's lockup in the courthouse, except for petitioner Hall, who was free on bond. The record does not reflect Hall's whereabouts. Attorney Thomas Clifford, counsel for petitioner Hall, responded "I have no request"; no other attorney made any response at all. After a brief procedural discussion, the Court began taking evidence on petitioners' motion to suppress evidence seized by the Government on several different occasions.

When Court resumed after lunch on March 12, the Court relayed to counsel a question posed by Chief Deputy United States Marshal Anthony Dirienzo, who wanted to know whether counsel desired their clients to remain in the building, or whether he could return them to their respective jails. Clifford was the first to say that he did not want his client to remain. After a brief discussion, attorney Emil Frankel, petitioner Wilcox's attorney, said that he also did not require his client's presence. Attorney Robert Oliver made a similar concession with respect to his client, petitioner Morrow. Attorney Daniel Sagarin, petitioner Jenkins' counsel, said nothing at all at this

Memorandum of Decision

point. Sagarin has invoked the attorney-client privilege and has declined to respond to the Government's request to disclose his role in the proceedings. The Government, however, has submitted the affidavit of Marshal Dirienzo, who avers that he approached Sagarin on March 12 before Court opened and asked if counsel desired petitioners' presence in Court.

"I recall being advised by him as follows: that he (Attorney Sagarin) doubted it 'strongly' (that they [defense counsel] would want the defendants present in the courtroom during the hearing) as it would give the Government witnesses who were going to identify them (the defendants) a 'pre-view'." [sic]

Dirienzo affidavit, ¶ 5. (All parentheticals in original). The Marshal then informed Sagarin that if counsel wanted the defendants, they should advise him. He says that he did not receive any request from Sagarin or any other attorney to bring any of the petitioners in his custody into the courtroom. In addition, the Government has also submitted the affidavit of attorney Oliver, who remembers at least two conversations among the attorneys, including Sagarin, "to the effect that they did not want their clients present in the courtroom . . . so that the witnesses would not have an opportunity to observe their clients." Oliver affidavit, ¶ 5.

With one exception, the record indicates that no petitioner was again present in the building on any of the days on which suppression hearings were held. The exception is Wilcox, who testified on March 16 concerning

Memorandum of Decision

events surrounding his own arrest, and who asked and was permitted to remain in Court following his testimony.*

The final three days of hearings, beginning on March 26, involved motions to suppress photographic identifications on the ground the photo spreads were suggestive. As the hearing began on that day, the prosecutor made the following representation to the Court, with all defense counsel present.

"I have had conversation with defense counsel in this case, and they each stated to me that they did not wish that their clients be present during this hearing. I offered to produce them, and they said they did not want them here.

"So, as far as the Government is concerned none of the defendants have been brought here, at their counsel's request."

Before accepting this decision, the Court ascertained that none of the photo identifications was made in the presence of any defendant.

Wilcox's petition is the most detailed. He disputes none of the material facts stated above, but in the unverified document appears to contend that he was not aware, despite his presence in the building on March 12, that hearings had been held in his absence on March 12

* Wilcox also claims he sent a letter to the Court on March 13 or 14 demanding that he be allowed to be present. No such letter appears in the Court files. In any event, in light of the ground of the present decision, the question of its existence *vel non* is not material.

Memorandum of Decision

and 13. The sworn affidavit of his attorney, Frankel, disputes this. He contends that he conferred with Wilcox prior to the commencement of the first suppression hearing and advised Wilcox "that he should not be in the courtroom during the pre-trial hearings because of the importance of identification testimony and the likelihood that his presence in the courtroom would insure his identification by witnesses." Frankel affidavit, ¶ 6. Frankel also claims Wilcox at no time requested to be present, until he elected to testify on March 16,⁵ and that at no time thereafter did he make any request to be present.

Jenkins presented his motion in the form of a request to join the action commenced by Wilcox. His petition alleges no other specific details, except the claim that he "emphatically requested" of his attorney that he be present at every stage of the proceeding. In his sworn response to the Government's interrogatories, however, Jenkins invoked the attorney-client privilege and refused to answer questions that sought to probe his allegations. He refused to say under oath whether he discussed his not being present with his attorney, and what advice, if any, his attorney had offered with respect to his being present. He also refused in general to waive the privilege, and explicitly denied that he was claiming that his representation had been ineffective.

Hall's petition was limited to requesting permission to join with Wilcox, and he alleges no details at all. In responding to the Government's interrogatories, Hall ad-

⁵ Frankel's fears were justified. Wilcox was identified, when he chose to remain in Court on March 16 after his own testimony, by the Chief of the Danbury Police Department.

Memorandum of Decision

mits that he was out on bond and not in federal custody at the time of the hearings, and in all other respects duplicates Jenkins' responses; he also invokes the attorney-client privilege with respect to questions concerning consultation with his counsel on the advisability of his being present for the hearings, a position to which his attorney has adhered.

Morrow, who was in custody during the hearings, alleges no facts in her petition and has filed interrogatory responses identical to those submitted by Jenkins. Her attorney has also submitted an affidavit; he admits that Morrow was in the courthouse building on March 12 and that she remained in the Marshal's lockup for the entire day.

"At my request Lynn Ellen Morrow was not brought into the courtroom on March 12, 1973, and was not present for any of the evidentiary hearings held on the various pre-trial suppression motions." Oliver affidavit, ¶ 4.

The Government does not dispute the claim that petitioners were in fact absent from the courtroom during the hearings; nor does it dispute the general proposition that petitioners had a right to be present, *e.g.*, *United States v. Clark*, 475 F.2d 240 (2d Cir. 1973); *United States v. Dalli*, 424 F.2d 45 (2d Cir. 1970). See 8A Moore's Federal Practice ¶ 43.03[1]. The Government's sole contention is that, for tactical reasons, each attorney chose to exclude his client from the hearings, and that this decision waived petitioners' right to be present as effectively as if the Court had conducted an on-the-record

Memorandum of Decision

voir dire of each petitioner before acceding to his absence.*

There is no question that the right to be present, even during the trial itself, may be waived, *United States v. Tortora*, 464 F.2d 1202, 1208-10 (2d Cir. 1972)⁷ and the

* With respect to the hearings on the photographic identifications made out of petitioners' presence, the Government need not rest on waiver. Neither the Constitution nor Rule 43 assures the right to be present when such presence would be "useless or the benefit but a shadow," *Stein v. United States*, 313 F.2d 518, 522 (9th Cir. 1962), citing *Snyder v. Com. of Mass.*, 291 U.S. 97, 105 (1934). The issue at this segment of the hearing was not related to petitioners' guilt or innocence, compare *United States v. Bell*, 464 F.2d 667, 671 (2d Cir. 1972), and involved no events at which they were present and therefore able to advise their counsel on how to proceed with cross-examination. Cf. *United States v. Gradsky*, 434 F.2d 880 (5th Cir. 1970). Their presence would have served no useful purpose and was therefore not required.

Moreover, it is well settled that Rule 43 is subject to the harmless error provision of Rule 52(a), *United States v. Arriagada*, 451 F.2d 487 (4th Cir. 1971); *United States v. Schor*, 418 F.2d 26, 30 (2d Cir.); *United States v. Compagna*, 146 F.2d 524, 528 (2d Cir. 1945) (L. Hand, J.). See also *United States v. Crutcher*, 405 F.2d 239, 244 text at n. 2 (2d Cir. 1968). For the reasons already expressed, the Court would be prepared to hold that petitioners' absence from this portion of the hearings, assuming an unwaived right to be present, was harmless error beyond a reasonable doubt. See 3 Wright, Federal Practice and Procedure § 721, text at n. 8. The disposition of the case, however, makes it unnecessary to reach this point.

⁷ There is some authority for the proposition that a defendant in custody may never execute such a waiver. See *United States v. Crutcher*, 405 F.2d 239, 243 (2d Cir. 1968). These cases all relate either to events occurring at the trial itself, involving either the impanelling of the jury, *ibid.*; *Cross v. United States*, 325 F.2d 629 (D.C. Cir. 1963), or improper communications between Court and jury, *Evans v. United States*, 284 F.2d 393 (6th Cir. 1960). No Court has ever suggested that this rule, if it is a rule, applies to pre-trial proceedings, and in light of the substantial tactical reasons for counsel to prefer their clients to be absent from such hearings, it would be unwarranted to apply such a rule in these circumstances.

Memorandum of Decision

Court of Appeals for this Circuit appears to assume that in-court statements of the attorney may be sufficient to effect the waiver, *United States v. Crutcher, supra*, 405 F.2d at 243, an assumption that there is little reason to question. No court has ever classified the right to be present at a pre-trial suppression hearing as one of those rights so clearly personal that only a personal, on-the-record statement by the defendant himself may suffice to waive it. See *Winters v. Cook*, 489 F.2d 174, 179 (5th Cir. 1973) (*en banc*); *Developments in the Law—Federal Habeas Corpus*, 83 Harv. L. Rev. 1038, 1111 n. 102.

An attorney^{*} may, without prior consultation with his client, waive the client's right to confront witnesses against him at trial by agreeing to the use at trial of a transcript of testimony taken at pre-trial hearings, *Rodriguez v. Nelson*, 286 F. Supp. 321 (C.D. Cal. 1968); he may also waive the right to grand and petit juries selected without regard to race, *Aaron v. Capps*, 507 F.2d 685 (5th Cir. 1975); *Weems v. United States*, 361 F. Supp. 922 (D. Md. 1973). See also, *Vessels v. Estelle*, 376 F. Supp. 1303, 1308 (S.D. Tex. 1973), *aff'd*, 494 F.2d 1295 (5th Cir. 1974) (waiver of insanity defense). Each of these rights is at least as substantial as the right to be present at a pre-trial hearing not directly concerned with the determination of guilt; if an attorney may waive these rights, there is no reason why he may not waive the right to be present as well.

In *Crutcher, supra*, the Court of Appeals intimated in *dictum* that the waiver would be effective only if done

^{*} It of course makes no difference whether the attorney is appointed or retained, cf. *United States v. Marshall*, 488 F.2d 1169 (9th Cir. 1973).

Memorandum of Decision

with the client's knowledge and consent. *Crutcher*, however, involved the impanelling of the jury, a right mentioned specifically in Rule 43, and an event that is part of the trial itself. Moreover, the absence of a defendant from the jury selection process is particularly fraught with prejudice; prospective jurors would be very likely to draw adverse inferences from the failure of a criminal defendant to be present at the jury's selection. Such an opportunity for prejudice, almost unavoidably present at jury selection, simply does not exist at a suppression hearing.

The record in the present case demonstrates with sufficient clarity that each of the attorneys intended that his client not be in the courtroom, and that in each case the ground of decision was to avoid the possibility that the client would be identified from the witness stand by the Government's witnesses. This decision on a matter of trial strategy, made by the person to whom the conduct of the defense is by law confided, see *United States v. Sorrentino*; 175 F.2d 721 (3d Cir. 1949), precludes petitioners from collaterally attacking their convictions on the basis of the attorneys' decision. Cf. *Henry v. Mississippi*, 379 U.S. 443, 451-52 (1965).

The affidavits of the defense attorneys and of Marshal Dirienzo, all described above, establish that this tactical reason was the basis for counsels' decision, and the Court's inquiries about counsels' desire for their clients' presence, at times when all counsel were in Court, is an adequate record on which to base the conclusion that all counsel in fact made the choice. The conclusion is additionally supported by the affidavit submitted by the Assistant United States Attorney who was the prosecutor in the case. He

Memorandum of Decision

avers that he repeatedly informed counsel of his intention to seek in-court identifications of any defendant present during the hearings, a claim supported by the representation that he made to the Court at the beginning of the second segment of the hearings, to which no counsel responded.

Accordingly, the motions for relief pursuant to 28 U.S.C. § 2255 are denied.*

Dated at Hartford, Connecticut, this 4 day of August, 1975.

/s/ JON O. NEWMAN
JON O. NEWMAN
United States District Judge

* It is unnecessary to decide the Government's motion to compel additional responses to its interrogatories.

Affidavit of Andrew B. Bowman
UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
Civil No. N-75-112

NORMAN WILCOX

—v.—

UNITED STATES OF AMERICA

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD ss.:

Bridgeport, Connecticut, May 28, 1975

ANDREW B. BOWMAN, being duly sworn, does depose and say:

1. At the time of this affidavit I am an attorney at law practicing in the city of Bridgeport, and was formerly an Assistant United States Attorney for the District of Connecticut.

2. That during the period of time that I held a position of Assistant United States Attorney I prosecuted and directed the investigation of the case known as *United States v. Norman Wilcox, et al*, a federal bank robbery case, the subject matter of which was the September 12, 1972, armed robbery of a federally insured bank.

3. From the time that counsel appeared in the case I maintained an open file policy.

Affidavit of Andrew B. Bowman

8. Subsequently, during the course of the hearing on March 12, 1973, the defendants were not brought into the courtroom although all defendants in custody were present in the United States Courthouse at New Haven, Connecticut. All defendants in custody remained in the United States Marshal's "lockup".

9. On March 16, 1973, Norman Laverne Wilcox was present for the continuation of the motion to suppress and was present in the courtroom. He was promptly identified by Chief Tallon as being present at 42A Virginia Avenue, Danbury, Connecticut, on the day that the robbery took place.

10. On March 26, 1973, the motions to suppress identification testimony commenced and in open court I advised the court that defense counsel had stated to me that they did not wish their clients to be present during this hearing. In accordance with the wishes of defense counsel, their clients were not present during the motions to suppress identification testimony.

.....
ANDREW B. BOWMAN

Subscribed and sworn to before
me this day of May 1975.

.....
COMMISSIONER OF THE SUPERIOR COURT

Affidavit of Emil Frankel

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
Civil No. N-75-112

NORMAN WILCOX

—v.—

UNITED STATES OF AMERICA

STATE OF NEW YORK
COUNTY OF NASSAU ss.

Hempstead, N.Y. May 29, 1975

EMIL FRANKEL, being duly sworn, does depose and say:

1. I am an attorney at law and formerly practiced law in the city of Stamford, Connecticut, with the law firm of Wofsey, Rosen, Kweskin & Kuriansky.

2. I was appointed under the Criminal Justice Act to defend Norman Laverne Wilcox in Criminal No. B-63 which was consolidated with United States v. Lynn Ellen Morrow, Criminal No. 13,225.

3. Norman Laverne Wilcox was in the custody of the United States Marshal for the District of Connecticut at the commencement of the pre-trial suppression motions which began on March 12, 1973.

**Affidavit of Emil Frankel*

4. Norman Laverne Wilcox was present at the Courthouse, New Haven, Connecticut, on March 12, 1973, but remained in the Marshal's "lockup".

5. I conferred with Norman Laverne Wilcox at the United States Courthouse in New Haven, Connecticut, prior to the commencement of the first suppression hearing.

6. I advised Norman Laverne Wilcox that he should not be in the courtroom during the pre-trial hearings because of the importance of identification testimony and the likelihood that his presence in the courtroom would insure his identification by witnesses.

7. Although we discussed his not being present in the courtroom, Norman Laverne Wilcox did not specifically request to be present during the same suppression hearing. Had he done so, he would have been present.

8. During subsequent discussions concerning his defense Norman Laverne Wilcox elected to testify to the events surrounding his arrest in the state of New Jersey by a New Jersey State Trooper. Norman Laverne Wilcox was brought to the Courthouse on March 16, 1973, and was present during the testimony of James P. Tallon, Chief of Police, Danbury Police Department, and Chief Tallon identified Norman Laverne Wilcox in the courtroom at page 235 of the transcript of the pre-trial motions.

9. Norman Laverne Wilcox remained in the courtroom for the rest of the proceedings on March 16, 1973, as he requested to do so, and this was reflected at page 338 of the transcript of the pre-trial motions.

-Affidavit of Emil Frankel

10. / Norman Laverne Wilcox was not present for subsequent pre-trial motions to suppress which involved the defendants' attempt to suppress photographic identifications. His nonpresence at this time was based upon the likelihood that his presence in the courtroom would insure his identification by the witnesses that testified.

11. At no time during the pre-trial hearings was Norman Laverne Wilcox denied a request to be present in the courtroom.

12. To the best of my knowledge and recollection, at all times other than March 16, 1973, when Norman Laverne Wilcox and I agreed that he should testify, we discussed and he accepted my advice that he not be present in the courtroom. That advice was based on my opinion that having any of the defendants present in the courtroom during the pre-trial suppression motions would undoubtedly lead to their being identified in the courtroom. It was felt that tactically and strategically it was in the best interest of my client that he not be present in the courtroom during the pre-trial suppression motions.

/s/ EMIL FRANKEL
EMIL FRANKEL

Subscribed and sworn to before
me this 29th day of May, 1975.

/s/ GERALD N. GOLDBERG
GERALD N. GOLDBERG
Notary Public, State of New York
No. 31-6558320
Qualified in New York County
Commission Expires March 30, 1976

Affidavit of Robert G. Oliver
UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
Civil No. N-75-112

NORMAN WILCOX

—v.—

UNITED STATES OF AMERICA

STATE OF CONNECTICUT
COUNTY OF NEW HAVEN ss.

New Haven, Connecticut, May 22, 1975

ROBERT G. OLIVER, being duly sworn, does depose and say:

1. I am an attorney at law and have been admitted to practice before the Bar of the State of Connecticut and of this Court since 1965.

2. I was appointed under the Criminal Justice Act to defend Lynn Ellen Morrow in Criminal No. 13225 (and certain companion cases). Criminal No. 13225 was, over my objection, consolidated with Criminal No. B-63, United States v. Wilcox, Bailey, Hall and Jenkins.

3. Lynn Ellen Morrow was in the custody of the United States Marshal at the commencement of pre-trial suppression motions on March 12, 1973, and was present at the Federal courthouse at New Haven in March 12, 1973, but remained in the Marshal's "lockup".

Affidavit of Robert G. Oliver

4. At my request Lynn Ellen Morrow was not brought into the courtroom on March 12, 1973, and was not present for any of the evidentiary hearings held on the various pre-trial suppression motions.

5. I recall at least two conversations by attorneys for the other defendants, Wilcox, Bailey, Hall and Jenkins, to the effect that they did not want their clients present in the courtroom during the several suppression hearings so that the witnesses would not have an opportunity to observe their clients.

6. My recollection is that, in fact, none of the other defendants were present in court during the suppression hearings except Wilcox on the day he testified concerning his arrest in New Jersey.

/s/ ROBERT G. OLIVER
ROBERT G. OLIVER

Subscribed and sworn to before me on this 27th day of May, 1975.

/s/ CAROL A. KANE
Notary Public

Affidavit of Anthony Dirienzo

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil No. N-75-112

NORMAN LAVERNE WILCOX

—v.—

UNITED STATES OF AMERICA

STATE OF CONNECTICUT
COUNTY OF NEW HAVEN ss.

New Haven, May 28, 1975

ANTHONY DIRIENZO, being duly sworn, deposes and says:

1. Prior to March of 1973, up to and including the date of this affidavit I have been Chief Deputy United States Marshal for the District of Connecticut.

2. One of the duties of my office is the care, custody and control of defendants in criminal cases pending in the District of Connecticut who are otherwise not at liberty.

3. On March 12, 1973, I caused Norman Laverne Wilcox, James Bailey, Richard Jenkins and Lynn Ellen Morrow to be brought to the United States Court House at New Haven, Connecticut because of a hearing that

Affidavit of Anthony Dirienzo

was scheduled to take place on that date. Donald Hall was not in my custody at that time as he was at liberty. All of the aforesaid individuals were defendants in Criminal No. B-63 and 13,225.

4. On March 12, 1973, Norman Laverne Wilcox, James Bailey, Richard Jenkins and Lynn Ellen Morrow after being brought to the United States Court House at New Haven, Connecticut remained in the Marshal's "lockup" and were not brought into the courtroom.

5. At some point in time the defendants mentioned in paragraph 4 arrived at the United States Court House at New Haven, Connecticut. I approached Attorney J. Daniel Sagarin, who was one of the defense counsel in the case, and asked him if they (he and his co-defense counsel) wanted the defendants present in the courtroom at the hearing on the motion to suppress. I recall being advised by him as follows: that he (Attorney Sagarin) doubted it "strongly" (that they [defense counsel] would want the defendants present in the courtroom during the hearing) as it would give the Government witnesses who were going to identify them (the defendants) a "preview".

I then advised Mr. Sagarin that if they (defense counsel) wanted the defendants in the courtroom to so advise me. I did not receive any request from any of the defense counsel to bring any of the defendants in my custody into the courtroom on March 12, 1973.

6. On March 12, 1973 after the luncheon recess, I inquired of Judge Newman whether I could return the defendants who were in custody to their respective jails. I recall Judge Newman asking defense counsel if the presence of the defendants (in the "lockup") was re-

~~EXHIBIT B4~~ Affidavit of Anthony Dirienzo

quired for the rest of the afternoon. After a short period of time I was advised that I could return the defendants in my custody to their respective jails.

7. On March 16, 1973, I caused defendant Norman Laverne Wilcox to be brought to the United States Court House at New Haven, Connecticut for a hearing on a motion to suppress.

8. Other than March 12, 1973 and March 16, 1973, defendants Norman Laverne Wilcox, James Bailey, Richard Jenkins and Lynn Ellen Morrow were not brought to the United States Court House at New Haven, Connecticut for any of the pre-trial motions to suppress.

.....
ANTHONY DIRIENZO

Subscribed and sworn to before
me this day of May, 1975.

.....
Commissioner of the Superior Court

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

----- -X
:
UNITED STATES OF AMERICA,
:
-against-
:
RICHARD ALBERT JENKINS, DONALD HALL,
NORMAN LAVERNE WILCOX and JAMES
CALDWELL BAILEY, JR.,
:
Defendants.
:
----- -X

B-63 Criminal

United States Court House
New Haven, Connecticut
March 12, 1973

B e f o r e:

Hon. JON O. NEWMAN, U.S.D.J.

A p p e a r a n c e s:

For the Government:

ANDREW B. BOWMAN, Esq.,
Assistant United States Attorney
915 Lafayette Boulevard
Bridgeport, Connecticut

RECEIVED
MAR 14 1973
U.S. DISTRICT COURT
NEW HAVEN, CT

1 was abandoned in front of 42A Virginia Avenue, that a Mr.
2 Blakeney who resides -- John Blakeney, who resides at 42A
3 Virginia Avenue, asked the police to come and tow the car away.

4 MR. CLIFFORD: Your Honor, may I interpose for a
5 second, your Honor, we were planning to move for the sequestra-
6 tion of any prospective government witnesses. I think during
7 this offer of proof this might be a time to make that motion.
8 I would move that the government witnesses be sequestered.

9 MR. BOWMAN: I have no objection if that pertains to --

10 THE COURT: Let me get one thing straight. Do counsel
11 wish to have their clients in the courtroom?

12 MR. CLIFFORD: I have no request. The sequestration
13 order I think ought to include the fact that they not discuss
14 this matter with each other outside the presence of the Court.

15 MR. BOWMAN: They can't discuss their testimony with
16 someone else outside the court. They may have discussed it for
17 thirty days prior to this hearing, but --

18 THE COURT: You mean before they testify?

19 MR. CLIFFORD: They should not discuss with any
20 witness that comes out, either the testimony of that witness,
21 what he said, or with that witness as to what they plan to
22 testify to. I think it's much simpler, your Honor, if the
23 witnesses be ordered not to discuss either their prospective
24 testimony with each other as of now, or their prospective
25 testimony with anyone who has already testified in this case.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

-----X
UNITED STATES OF AMERICA :

-against- :

RICHARD ALBERT JENKINS, DONALD HALL, :
NORMAN LAVERNE WILCOX and JAMES :
CALDWELL BAILEY, JR., :

B-63
Criminal

Defendants. :

-----X
United States Court House
New Haven, Connecticut
March 12, 1973

B e f o r e :

HON. JON O. NEWMAN,

U. S. D. J.

A p p e a r a n c e s :

For the Government:

ANDREW B. BOWMAN, ESQ.,
Assistant United States Attorney
915 Lafayette Boulevard
Bridgeport, Connecticut

Reported By:
GERALD GALE

SANDERS, GALE & RUSSELL
CERTIFIED STENOTYPE REPORTERS

750 MAIN STREET
HARTFORD, CONNECTICUT

905 CHURCH STREET
NEW HAVEN, CONNECTICUT

AFTERNOON SESSION

THE COURT: The Marshal's office wants to know whether you will require the presence of the defendants, at least those in the custody of the Marshal.

MR. CLIFFORD: I do not.

THE COURT: Does any counsel want them present?

MR. FRANKEL: It depends on whether Mr. Wilcox is going to remain in the jurisdiction. He has been in Philadelphia. If he is going to be available to me over the period of the next couple of days in this jurisdiction, I won't insist on him remaining in the lockup this afternoon.

THE COURT: I think that was the only question, whether they are going to be in this building today. They will be in the jurisdiction; is that right, Mr. Marshal?

THE MARSHAL: We can make them available.

MR. BOWMAN: Mr. Frankel has one concern. Wilcox has another trial pending, supposed to get started around the 1st of April.

I would rather see him stay here until we

1
2 THE COURT: Why don't we do this: Why
3 don't we have him remain in the District at least
4 until the Eastern District of Pennsylvania
5 indicates there is a certain trial date that
6 would take precedence over a trial date to be
7 set here -- but at the moment it seems to be
8 more of a hope than a certainty?

9 MR. BOWMAN: That is my indication.

10 THE COURT: So he might as well remain
11 here until that District advises us of a definite
12 situation.

13 But, in any event, counsel do not require
14 the attendance of the defendants during this
15 hearing; is that right?

16 MR. FRANKEL: That is correct.

17 MR. ROSEN: My client is here as well,
18 and I regard it as extremely unlikely that I will
19 want him to testify, but I want to leave that
20 possibility at least formally open. So far as
21 the Court's plans are concerned, I regard it as
22 unlikely enough so I think it might make sense, if
23 the Marshals have other business, to have him
24 taken away, especially since there are a lot of
25 other witnesses --

THE MARSHAL: If we return him to the jail, there won't be anybody to return him. If you feel you might need him, we will keep him.

MR. ROSEN: He can go, but I would like to see him for a moment before he does.

May I be excused for a minute to see my client?

MR. FRANKEL: May I, too, your Honor?

THE COURT: All right.

MR. BOWMAN: I would like to bring one matter to the attention of the Court:

There are witnesses in the building who are outside this courtroom who may see the defendants walk by, so possibly --

MR. MARSHAL: We will use the back door.

MR. OLIVER: With reference to Miss Morrow, I would not anticipate her testifying today, since she is the one least geographically --

THE COURT: Is she in custody?

MR. BOWMAN: She is being held in lieu of \$50,000 bond for a bank robbery in North Carolina.

THE COURT: Not on this charge?

MR. BOWMAN: No.

MR. CLIFFORD: While we are addressing the

1
2 Court:

3 I have to see Judge Zampano. I thought I
4 could catch him. As close to two o'clock he had
5 not returned from lunch.

6 Mr. Sartos will probably sit in for at
7 least part of it. I am sure that the other
8 counsel could handle most of the questioning on
9 that.

10 If I could absent myself for a fairly short
11 period, it resolves a hearing tomorrow.
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

-----X

UNITED STATES OF AMERICA	:	
-against-	:	B-63 Criminal
RICHARD ALBERT JENKINS, et al.,	:	
Defendants.	:	

-----X

United States Court House
New Haven, Connecticut
March 16, 1973
3:30 o'clock p.m.

B e f o r e :

HON. JON O. NEWMAN, U. S. D. J.

Appearances:

For the Government:	ANDREW B. BOWMAN, ESQ., Assistant United States Attorney
For the Defendants:	J. DANIEL SAGARIN, ESQ., SCHLESS & SAGARIN
	THOMAS D. CLIFFORD, ESQ., Federal Public Defender
	EMIL FRANKEL, ESQ.
	DAVID ROSEN, ESQ.
	ROBERT G. OLIVER, ESQ., DAGGETT, COLBY & HOOKER

That was the extent of our conversation.

Q At the end of the conversation, did you talk to him again?

A No, sir.

Q Where did you go when you ended that conversation?

A I went out to my car, which was parked in front of the house.

Q Can you see everyone who is seated out in the courtroom at this time?

A Yes, sir.

Q Do you see the male you spoke to who had been in the bathroom for about twenty-five minutes?

A Yes, sir.

Q Would you point him out, please.

A That gentleman seated in the second row with the dungaree jacket.

MR. BOWMAN: May the record reflect the witness is identifying Defendant Wilcox.

Q Did you ever give him back this registration?

A No, sir.

I went to the house later on that day, and I learned that Mr. Wilcox had left that particular area for parts unknown.

Q During your conversation with Mr. Wilcox, did he

N O R M A N W I L C O X , called as a witness on
behalf of the Defendants, having been first duly sworn
by the Clerk of the Court, was examined and testified
as follows:

THE CLERK: What is your name?

THE WITNESS: Norman Wilcox.

THE CLERK: What is your address?

THE WITNESS: 1537 North Myrtlewich
Street, Philadelphia, Pennsylvania.

MR. FRANKEL: Before beginning the
examination, I would like to state to the Court
that this examination is strictly limited to the
incidents surrounding Mr. Wilcox' arrest on a
traffic violation in New Jersey on October 15th.

DIRECT EXAMINATION

BY MR. FRANKEL:

Q On October 15, 1972, Mr. Wilcox, when you were
stopped in New Jersey by the New Jersey State Police, were
you asked to show your licence?

A Yes, I was.

Q Were you asked to show your registration?

A Yes, I was.

Q The registration for the vehicle?

A Yes.

1 321
2 Q You were driving a motorcycle at that time?

3 A That's correct.

4 Q When you were asked to show the registration,
5 what did you say?

6 A It was in the left saddlebag.

7 Q You said it was in the left saddlebag.

8 What happened at that point?

9 A The officer said, "Before we go through any of
10 this, do you have any weapons, knives, guns?" And he frisked
11 me down.

12 Q He had you get off the motorcycle and he frisked
13 you?

14 A Yes, sir.

15 Q Then what happened?

16 A Then I opened the left bag --

17 THE COURT: You say he at one time
18 pointedly asked you if you had any weapons?

19 THE WITNESS: Yes.

20 THE COURT: Before he frisked you?

21 THE WITNESS: Yes.

22 THE COURT: He first asked you; then he
23 frisked you?

24 THE WITNESS: Yes.
25

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Wilcox - direct

BY MR. FRANKEL:

Q You said you opened the left saddlebag?

A Yes.

Q Did you hand him anything at that point or say anything to him at that point?

A I gave him an envelope, a white envelope containing a bill of sale and a warranty slip.

Q Did the trooper go through the contents of the envelope?

A Yes, sir.

Q To your knowledge, did he look at the bill of sale?

A Yes, sir.

Q What happened after he went through the contents of the envelope?

A He went to the car and made a call.

Q He went to his police car--

A Yes, sir.

Q -- and made a call on his radio?

A That's correct.

Q Do you know what he said in that conversation?

A No.

Q After he made that call, did he return to where you were?

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1
2 A Yes.

3 Q What did he tell you at that point?

4 A Move to the front of the bike --

5 THE COURT: To what?

6 THE WITNESS: To move to the front of the
7 bike, the motorcycle.

8 A --- to give him room.

9 THE COURT: I do not understand the
10 physical situation. Where were you that he
11 wanted you to move?

12 THE WITNESS: Your Honor, I was standing
13 at the motorcycle, but the trooper --

14 THE COURT: Alongside of it?

15 THE WITNESS: Yes, sir.

16 THE COURT: Not astride it?

17 THE WITNESS: I was off it.

18 THE COURT: You were standing next to it,
19 and he asked you to move forward?

20 THE WITNESS: I mean to walk to the front
21 of the bike.

22 BY MR. FRANKEL:

23 Q Did he ask you whether there was any further
24 certificate of ownership or identification of ownership or
25 registration?

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A He asked me why wasn't the bike registered.

Q What did you tell him?

A That I was taking the bike back to the dealer for warranty service.

Q Did you indicate anything else, or did he ask you any other questions about the ownership of the motorcycle?

A Well, after checking the serial numbers of the motorcycle, he called me to the rear of the motorcycle and told me to pop the other bag -- in other words, take the lock off the other bag -- move back to the front of the motorcycle, and turn around and keep my hands in plain view.

Q When you say "the other bag," you mean the bag on the other side of the motorcycle from the one from which you had taken the envelope?

A Yes, sir.

Q Did you open the bag?

A No, sir.

Q Did you unlock it?

A I unlocked it.

Q You then moved to the front of the bike?

A Yes, sir.

Q The front of the motorcycle?

A Yes.

Q What did the officer do at that point?

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Wilcox - direct

A Proceeded to search.

Q When you say that, what did he do? Did he
remove contents?

A He removed a fifth of Thunderbird wine, he removed
my clothing, my toilet kit, and he laid them on the grass;
and at the bottom he took out a bag.

MR. FRANKEL: That is all, your Honor.

THE COURT: A bag is the last item?

THE WITNESS: Yes, sir.

THE COURT: It was a paper bag?

THE WITNESS: Yes, sir.

CROSS-EXAMINATION

BY MR. BOWMAN:

Q What was in that bag, Mr. Wilcox?

A It was a revolver.

Q A .38 Taurus revolver?

A Yes, sir.

Q What was written on the bag?

A Nothing. Plain brown bag.

Q Just a plain brown bag.

Mr. Wilcox, did you have a cardboard license plate
on your motorcycle?

A Yes, I did.

Q Did you show the trooper who arrested you the

license?

A Yes, sir.

Q Was the name on that license William Fuller?

A Yes, sir .

Q In the envelope which you took from the saddlebag,
was there a bill of sale in there?

A Yes, sir.

Q Was that bill of sale to one William Fuller?

A No, sir.

Q Who was it made out to?

A James C. Bailey.

THE COURT: In whose name was the license?

THE WITNESS: William Fuller.

THE COURT: Who was the bill of sale to?

THE WITNESS: James C. Bailey.

BY MR. BOWMAN:

Q Where did you get William Fuller's license?

A It's my cousin's.

Q James Calvin Lyles -- is that your name?

A No, it's an alias.

Q Did you have any other evidence of ownership of
the motorcycle that you presented to the trooper who arrested
you, besides the bill of sale?

A No, I don't think so.

Q Where did you get the cardboard license plate to put on the motorcycle?

MR. FRANKEL: I will object to that.
That is beyond the scope of the examination.

THE COURT: You have asked him about the incident concerning the stopping of him. I think he can explore this.

MR. FRANKEL: I claim it, your Honor.
He was asked about the incident, his conversation with the trooper, and this did not come up in the examination; and I do not think it relevant to the examination.

THE COURT: You are protected as far as a trial.

You can ask it.

BY MR. BOWMAN:

Q Where did you get the cardboard tag to put on the motorcycle?

A I got the cardboard from the shop where the bike was purchased.

Q You mean somebody gave you that tag to go along with the bike?

A The tag was made up.

Q The tag was made up?

1 A That's correct.

2 Q Who gave it to you?

3 A No one personally gave it to me.

4 Q You mean you took it?

5 A No. The cardboard tag -- the tag was made up and
6 put on the bike. The cardboard was at the shop. It was
7 just scrap.

8 Q Who put the numbers on the tag?

9 A I put the numbers on the tag.

10 Q Did you copy the numbers from any place, or did
11 you just think of the numbers out of your head?

12 A It was a prior number I used to have on a motor-
13 cycle.

14 Q Where was it that you purchased the motorcycle?

15 A New York.

16 MR. ROSEN: Objection. It is irrelevant.
17 He is looking for discovery at this point.

18 THE COURT: Wait a minute. There is a
19 very sharp issue of credibility here, and
20 certainly some cross-examination is going to be
21 allowed to probe it.

22 MR. ROSEN: What conceivable answer could
23 Mr. Wilcox give which would affect his credibility
24 as to where he purchased the motorcycle?
25

THE COURT: I cannot anticipate all the ways the Government can try to persuade me on the issues of credibility, but this one is not so plainly lacking.

Mr. ROSEN: I object.

THE COURT: Go ahead.

MR. BOWMAN: Read the question.

(The last question was read by the reporter as above recorded.)

BY MR. BOWMAN:

Q New York?

A That's correct.

Q From whom did you purchase it?

A It wouldn't be familiar. You have to look at the bill of sale.

Q You do not know where you purchased it?

A No.

Q Did you purchase it from James Bailey?

A No, sir.

Q But you had a bill of sale which represented James Bailey was the owner of the bike; is that correct?

A That's correct.

THE COURT: Did you buy the bike at a store?

THE WITNESS: Yes, sir.

BY MR. BOWMAN:

Q But you do not know the name of the store?

A No, sir.

Q Do you know how long you had that bike at the
time of your arrest?

A Not right on.

Q Was it a matter of days?

A Weeks.

Q How many weeks?

A I couldn't recall.

Q Was it more than two weeks?

A I would say -- I couldn't recall.

Q Was it more than three weeks?

A I couldn't recall.

Q Was it less than two weeks?

MR. FRANKEL: I object to this. I
presume this is testing credibility as well,
but there are some limits, I would think, to
this, your Honor. I think Mr. Bowman has gone
as far in this regard as possible. It is
irrelevant to the examination.

THE COURT: It is certainly not irrelevant
to credibility.

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Wilcox - cross

BY MR. BOWMAN:

Q Was it less than two weeks, Mr. Wilcox?

A It was more than two weeks, but other than that I couldn't recall. You can check with the bill of sale and you will find the exact date.

Q Did you purchase the bike in Manhattan?

A That's where it was at.

Q Manhattan?

A Right.

Q Was it in Harlem?

A No, I don't think so.

Q Do you remember the street, the place you purchased it?

A No.

Q Do you remember how much you paid for it?

A All that's on the bill of sale.

Q Did you pay cash or did you pay by check?

A Cash.

Q Was it more than \$100?

A It was in the neighborhood of 28.

Q \$28?

A \$2800.

Q \$2800?

A That's correct.

1 Q What kind of a motorcycle was it?

2 A A 1972 blue and white Harley-Davidson, Electra-
3 glide, 74 model.

4 Q Is it your testimony that you cannot recall the
5 name of the place you bought the motorcycle?

6 A I know it was a Harley-Davidson, but other than
7 that --

8 Q Was it a Harley-Davidson dealership?

9 A A franchise.

10 Q Did anybody talk to you about your testimony or
11 tell you that a police officer from the New Jersey State
12 Police had testified at this hearing?

13 A No, sir.

14 Q Do you recall the name of the policeman who
15 arrested you on October 15th?

16 A Michael Medorska, I think, or something.

17 Q Did you place the gun in the saddlebag of that
18 motorcycle?

19 A I beg your pardon?

20 Q Did you, yourself, place the gun in the bag of
21 the motorcycle?

22 MR. FRANKEL: I object, your Honor.

23 Same grounds: Irrelevant, and not connected with
24 the examination.
25

THE COURT: There has been no concern of placing it there.

MR. BOWMAN: I will withdraw it.

BY MR. BOWMAN:

Q Do you remember the street you were on when you were arrested on October 15th?

A Route 1. I guess that would be in South Brunswick Township area or New Brunswick Township area.

Q After that you were lodged in the Middlesex County Jail; is that correct?

A That's correct.

MR. BOWMAN: Nothing further.

MR. FRANKEL: Just two questions.

REDIRECT EXAMINATION

BY MR. FRANKEL:

Q Mr. Wilcox, after the trooper looked at the bill of sale, did he ask you any questions about it? Did he ask you any questions about the bill of sale or any questions about the ownership of the bike?

A At the time he asked me who owned it, and I told him the owner of the bike was a person on the bill of sale.

Q Did he ask you anything further?

A That's all I can think of right now.

Q When he found the gun did he ask you any

Wilcox - redirect

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questions about the gun?

A No. He just told me to sit on the curb.

Q Did he ask you where the gun was registered?

A No.

MR. FRANKEL: That is all.

RE CROSS-EXAMINATION

BY MR. BOWMAN:

Q Mr. Wilcox, did you tell the officer that James Bailey was a friend of yours?

A Yes, sir, I did.

Q When was that during your conversation with him?

A We were going down to state trooper barracks.

Q But not at the time that he searched the right saddlebag of your motorcycle; is that correct?

A Not that I recall now.

Q Would I be correct if I stated that the trooper never knew, really, who James Bailey was? Is that correct?

Is that right?

A I don't think he did, no.

MR. BOWMAN: Nothing further.

MR. ROSEN: I have, I think, two questions.

THE COURT: What is your interest in this?

MR. ROSEN: It may be adverse, your Honor, if some of the evidence with respect to my client,

Mr. Bailey, is introduced by the Government, any of Mr. Wilcox' testimony is introduced against my client.

THE COURT: There is no way they can introduce this testimony in the case.

MR. ROSEN: I may have an interest in establishing the fact that it was not Mr. Bailey's motorcycle and he did not pay for it.

THE COURT: That it was not?

MR. ROSEN: That it was not my client's motorcycle.

THE COURT: If that is what you want to establish, then there is clearly no question that you do not have standing.

MR. ROSEN: I may not have standing in this proceeding, but I want to clear up ownership to clear up the question first of ---

THE COURT: Does the Government make any claim that it was Mr. Rosen's client's motorcycle?

MR. BOWMAN: The bill of sale was James Bailey's bill of sale. I cannot represent to the Court at this time that I will make absolutely no use of that during the trial.

THE COURT: All right, then you are
entitled to examine.

BY MR. ROSEN:

Q Mr. Wilcox, whatever the name of the place was,
you bought the motorcycle at a retail -- some kind of
motorcycle shop -- is that right?

A That's right.

Q You bought it?

A Yes, sir.

Q Mr. Bailey had nothing to do with buying it?

A Nothing whatsoever.

Q It was your money, not Mr. Bailey's money?

A Yes, sir.

Q It was your motorcycle?

A Right.

MR. ROSEN: Thank you.

THE COURT: How did it happen that Mr.
Bailey's name showed on the bill of sale?

THE WITNESS: I used that name, sir.

THE COURT: You supplied that name to the
seller?

THE WITNESS: Yes, sir.

THE COURT: Anything else?

(Witness excused)

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Tierney - direct

BY MR. ROSEN:

Q Would you examine Government's Exhibit 1 and tell me if you have seen the document of which this is a copy.

A Yes, sir.

Q Is this an affidavit in support of a search warrant and the executed warrant which were prepared by you, and which bears your signature as an affiant?

A Yes, sir, it is.

Q In preparing the search warrant, sir, did you speak to agents of the Federal Bureau of Investigation?

A Did I speak to any of them?

Q Yes.

THE COURT: Any reason that the Marshal cannot remove the defendant?

MR. FRANKEL: He has requested to stay throughout the suppression hearing. I think he has a right to be here if he wants to.

THE COURT: All right.

Q What was the name of the other individual whose signature also appears as an affiant?

A Sergeant Valentine Coelho, C-o-e-l-h-o.

Q Did you or this other individual speak to agents of the Federal Bureau of Investigation in preparing this

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

FILED

1973

UNITED STATES OF AMERICA

U.S. Attorney's Office
BRIDGEPORT, CT. 06606

-against-

B-63 Criminal

NORMAN LAVERNE WILCOX, JAMES CALDWELL
BAILEY, JR., and RICHARD ALBERT JENKINS,

Defendants.

UNITED STATES OF AMERICA

-against-

13,225 Criminal

LYNN ELLEN MORROW,

Defendant.

United States Court House
New Haven, Connecticut
March 26, 1973

B e f o r e :

HON. JON O. NEWMAN,

United States District Judge

A p p e a r a n c e s :

For the Government:

ANDREW B. BOWMAN, ESQ.,
Assistant United States Attorney
915 Lafayette Boulevard
Bridgeport, Connecticut

SANDERS, GALE & RUSSELL
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750 MAIN STREET
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205 CHURCH STREET
NEW HAVEN, CONNECTICUT

P R O C E E D I N G S

MR. BOWMAN: If your Honor please, there is one matter I would like to bring to the Court's attention in a preliminary way.

I have had conversation with defense counsel in this case, and they each stated to me that they did not wish that their clients be present during this hearing. I offered to produce them, and they said they did not want them here.

So, as far as the Government is concerned, none of the defendants have been brought here, at their counsel's request.

THE COURT: At the moment, today, I take it we are dealing with eye-witness identification?

MR. BOWMAN: That is correct.

THE COURT: Are any of the incidents where there was an identification situation where the defendant was present?

MR. BOWMAN: No. Each situation was a photographic identification; defendant was not present.

THE COURT: So we do not have the situation where he would or she would have an account of

the facts at variance with what is going in today?

MR. BOWMAN: That is correct.

There is some question as to who has the burden of going forward. I assume the Government has the burden, and we are prepared to present evidence.

THE COURT: I think it is simpler if you do. You know what happened and they did not. So, if you would develop the identification...

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